

Regulations 1598

Section 100

Complete Rule Making File

OAL Approval with Approved Text Regulation 1598

Index

1. *Form 400 and Proposed Regulation 1598*
2. *Statement of Explanation*
3. *Assembly Bill No. 6*

Other Documents Relied upon

- A. *Chief Counsel Memo Dated 06/24/10*
- B. *Draft Minutes, 07/15/10*
- C. *Reporters Transcript, 07/15/10*

**State of California
Office of Administrative Law**

In re:

Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections:

Amend sections: 1598

Repeal sections:

**NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT**

California Code of Regulations, Title 1,
Section 100

OAL File No. 2010-0722-02 N

RECEIVED

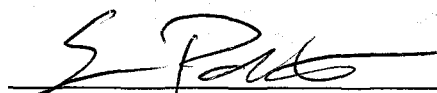
AUG 30 2010

by EXECUTIVE DIRECTOR'S OFFICE
STATE BOARD OF EQUALIZATION

This change without regulatory effect by the State Board of Equalization adds a new subdivision (d) to section 1598 of title 18 of the California Code of Regulations. The purpose of this addition is to incorporate provisions of Revenue & Tax Code §6357.7, which provides a partial exemption for the retail sale of, and the storage, use, or other consumption in this state of motor vehicle fuel. This rulemaking also re-labels current subdivisions (d)-(i) of section 1598, updates the regulation's internal cross-references so that they correctly refer to the relabeled subdivisions, and updates the Reference Citation to include RTC §6357.7. Additionally, this rulemaking updates two illustrations of the formulas used to calculate the amount of sales tax reimbursement included in the total price per gallon of gasoline and diesel fuels. These examples utilize hypothetical fuel prices, excise tax rates, and sales tax rates and have not been updated since 1996. This rulemaking includes only changes without regulatory effect made pursuant to section 100 of title 1 of the California Code of Regulations.

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, Title 1, section 100.

Date: 8/26/2010



Eric Partington
Staff Counsel

For: SUSAN LAPSLEY
Director

Original: Ramon Hirsig
Copy: Richard Bennion

RECEIVED
AUG 31 2010
Board Proceedings

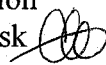
OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



SUSAN LAPSLEY
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk 
DATE: 8/30/2010
RE: Return of Approved Rulemaking Materials
OAL File No. 2010-0722-02N

OAL hereby returns this file your agency submitted for our review (OAL File No. 2010-0722-02N regarding Motor Vehicle and Aircraft Fuels).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved file is specified on the Form 400 (see item B.5). (Please Note: The 30th Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

Memorandum

To : Eric Partington
Attorney
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Date: August 26, 2010

From : Richard Bennion
Regulations Coordinator
Board Proceedings Division, MIC: 80

Subject : *OAL File No. 2010-0722-02N*
Regulation 1598, Motor Vehicle and Aircraft Fuels

This memo is to provide you authorization to:

- 1) Please replace the proposed text with the attached text file.

If you have any questions or comments, please notify me at (916) 445-2130 or email at Richard.Bennion@boe.ca.gov.

REB

NOTICE PUBLICATION/REGULATORY ACTION

SUBMISSION

(See instructions)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2010-0722-02N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization		AGENCY FILE NUMBER (if any)	

ENDORSED FILED
IN THE OFFICE OF

2010 AUG 26 PM 2:31


 DEBRA BOWEN
 SECRETARY OF STATE

2010 JUL 22 AM 11:00

OFFICE OF
ADMINISTRATIVE LAW**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Motor Vehicle and Aircraft fuels		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
TITLES		AMEND	
18		1598	
		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) <input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Rick Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
		E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

Diane G. Olson, Chief, Board Proceedings Division

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

AUG 26 2010

Office of Administrative Law

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 1598. Motor Vehicle and Aircraft Fuels.

(a) In General. . . . (unchanged).

(b) Exceptions.

(1) Neither the sales tax nor the use tax applies to the sale or use of motor vehicle fuel used in propelling aircraft, the distribution of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code. This type of fuel includes gasoline and similar fuels but does not include aircraft jet fuel. (See subdivision (hg) for requirements for supporting aircraft fuel exemptions.)

(2) . . . (unchanged).

(c) Measure of Tax.

(1) The measure of tax includes:

(A) . . . (unchanged),

(B) . . . (unchanged), and

(C) . . . (unchanged).

(2) The measure of tax does not include:

(A) . . . (unchanged):

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

4. . . . (unchanged).

5. . . . (unchanged).

(B) . . . (unchanged).

(C) The federal retailer's excise taxes on:

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

4. . . . (unchanged).

(D) Prior to July 1, 1995, the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (ih) for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (ih) for requirements for supporting claimed exclusions.)

(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (ji).

(d) Partial Exemption for Motor Vehicle Fuel. Operative July 1, 2010, section 6357.7 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for the sale of, and the storage, use, or other consumption in this state of motor vehicle fuel. "Motor vehicle fuel" means gasoline and aviation gasoline and does not include jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel, as defined in the Motor Vehicle Fuel Tax Law.

The partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 of the Revenue and Taxation Code (cumulative statewide 6% sales and use tax rate), but does not apply to the taxes imposed or administered pursuant to sections 6051.2, 6051.5, 6201.2, or 6201.5 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(ed) Sales of Motor Vehicle Fuel on Sales Tax-Included Basis. Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

"The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill."

Following are examples of prices computed on a tax-included basis:

(A)	Sales price per gallon of gasoline net of all taxes	\$2.4351-153
	Federal excise tax* .....	.184
	State excise tax* .....	.353180
	Total	\$2.9721-517
	*Sales tax reimbursement computed at $27\frac{1}{4}\%$ * of \$2.9721-517 ....	.067110
	Total tax-included price per gallon	\$3.0391-627
(B)	Sales price per gallon of diesel fuel net of all taxes*.....	\$2.3551-103
	Federal excise tax* .....	.244
	Total	\$2.5991-347
	*Sales tax reimbursement computed at $97\frac{1}{4}\%$ * of \$2.5991-347 ....	.234098
	State excise tax* .....	.136180
	Total tax-included price per gallon	\$2.9691-625

* The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.

(fe) Application of Sales or Use Tax to Fuel Furnished With Leased Vehicles or Aircraft. . . .
(text unchanged).

(gf) Refunds of Excise Tax

(1) Federal Excise Taxes. . . . (unchanged).

(2) Sales or Use Tax Refunds. . . . (unchanged).

(hg) Supporting Data for Aircraft Fuel Exemptions. . . . (unchanged).

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in subdivision (hg)(2). If a sales invoice is used, it must show the purchaser's name and address, the aircraft identification number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) . . . (unchanged).

(ih) Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. Sellers of gasoline, diesel or jet fuel for which the purchaser claims exclusion from the measure of tax under

subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision (ih)(1).

(1) . . . (unchanged).

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (ih)(1) and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

(ji) Alternate Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who is qualified under subdivision (ji)(1) may issue a certificate in substantially the form set forth in subdivision (ji)(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

(1) A purchaser is qualified and may issue a certificate under subdivision (ji) if satisfying all the following requirements:

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011, 6012, 6245.5, 6357, 6357.5, 6357.7, 6385 and 6423, Revenue and Taxation Code.

Regulation 1598

Section 100

Index

1. *Form 400 and Proposed Regulation 1598*
2. *Statement of Explanation*
3. *Assembly Bill No. 6*

NON SUBSTANTIAL

See ins

ns on

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2010-0722-02N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization			AGENCY FILE NUMBER (if any)

2010 JUL 22 AM 10:58
OFFICE OF
ADMINISTRATIVE LAW**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER
FAX NUMBER (Optional)		NOTICE REGISTER NUMBER		PUBLICATION DATE
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Motor Vehicle and Aircraft fuels		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
TITLE(S) 18		AMEND 1598	
		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) <input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Rick Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
		E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Diane G. Olson</i>	DATE 7/22/2010
TYPED NAME AND TITLE OF SIGNATORY Diane G. Olson, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 1598. Motor Vehicle and Aircraft Fuels.

(a) In General. . . . (unchanged).

(b) Exceptions.

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(2) . . . (unchanged).

(c) Measure of Tax.

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(A) . . . (unchanged),

(B) . . . (unchanged), and

(C) . . . (unchanged).

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(A) . . . (unchanged):

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(B) . . . (unchanged).

(C) The federal retailer's excise taxes on:

1. . . . (unchanged).

2. . . . (unchanged).

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4. . . . (unchanged).

(D) Prior to July 1, 1995, the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (ih) for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (ih) for requirements for supporting claimed exclusions.)

(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (ji).

(d) Partial Exemption for Motor Vehicle Fuel. Operative July 1, 2010, section 6357.7 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for the sale of, and the storage, use, or other consumption in this state of motor vehicle fuel. "Motor vehicle fuel" means gasoline and aviation gasoline and does not include jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel, as defined in the Motor Vehicle Fuel Tax Law.

The partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 of the Revenue and Taxation Code (cumulative statewide 6% sales and use tax rate), but does not apply to the taxes imposed or administered pursuant to sections 6051.2, 6051.5, 6201.2, and 6201.5 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(ed) Sales of Motor Vehicle Fuel on Sales Tax-Included Basis. Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

"The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill."

Following are examples of prices computed on a tax-included basis:

(A)	Sales price per gallon of gasoline net of all taxes	\$2.4351.153
	Federal excise tax* .....	.184
	State excise tax* .....	.353180
	Total	\$2.9721.517
	*Sales tax reimbursement computed at $27\frac{1}{4}\%$ * of \$2.9721.517 ....	.067110
	Total tax-included price per gallon	\$3.0391.627
(B)	Sales price per gallon of diesel fuel net of all taxes*	\$2.3551.103
	Federal excise tax* .....	.244
	Total	\$2.5991.347
	*Sales tax reimbursement computed at $97\frac{1}{4}\%$ * of \$2.5991.347 ....	.234098
	State excise tax .....	.136180
	Total tax-included price per gallon	\$2.9691.625

* The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.

(fe) Application of Sales or Use Tax to Fuel Furnished With Leased Vehicles or Aircraft. . . .
(text unchanged).

(gf) Refunds of Excise Tax

(1) Federal Excise Taxes. . . . (unchanged).

(2) Sales or Use Tax Refunds. . . . (unchanged).

(hg) Supporting Data for Aircraft Fuel Exemptions. . . . (unchanged).

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in subdivision (hg)(2). If a sales invoice is used, it must show the purchaser's name and address, the aircraft identification number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) . . . (unchanged).

(ih) Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. Sellers of gasoline, diesel or jet fuel for which the purchaser claims exclusion from the measure of tax under

subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision (ih)(1).

(1) ... (unchanged).

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (ih)(1) and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

(ji) Alternate Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who is qualified under subdivision (ji)(1) may issue a certificate in substantially the form set forth in subdivision (ji)(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

(1) A purchaser is qualified and may issue a certificate under subdivision (ji) if satisfying all the following requirements:

(A) ... (unchanged).

(B) ... (unchanged).

(C) ... (unchanged).

(2) ... (unchanged).

(3) ... (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011, 6012, 6245.5, 6357, 6357.5, 6357.7, 6385 and 6423, Revenue and Taxation Code.

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Changes to Title 18. Public Revenue

Regulation 1598, *Motor Vehicle and Aircraft Fuels*

A. Factual Basis

Statutes 2010, chapter 11 (Assem. Bill No. 6 (2009-2010 8th Ex. Sess.)), section 4, added Revenue and Taxation Code (RTC) section 6357.7 to the Sales and Use Tax Law to provide a partial exemption for the retail sale of, and the storage, use, or other consumption in this state of motor vehicle fuel, as defined in RTC section 7326. RTC section 6357.7, subdivision (b) provides that the partial exemption does not apply to the taxes imposed or administered pursuant to RTC sections 6051.2, 6051.5, 6201.2, and 6201.5, the Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with RTC § 7200), the Transactions and Use Tax Law (commencing with RTC § 7251), or section 35 of article XIII of the California Constitution. Therefore, RTC section 6357.7's partial exemption only applies to the sales and use taxes imposed by RTC sections 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 (6% of the cumulative statewide 8.25% sales and use tax rate).¹

California Code of Regulations, title 18, section (Regulation) 1598, *Motor Vehicle and Aircraft Fuels*, prescribes the application of sales and use tax to the sale and use of motor vehicle and aircraft fuels. Therefore, the State Board of Equalization (Board) proposes to add a new subdivision (d) to Regulation 1598 to incorporate the provisions of RTC section 6357.7 and bring the regulation into conformity with the Revenue and Taxation Code pursuant to California Code of Regulations, title 1, section (Rule) 100. The Board also proposes to re-number current subdivisions (d) through (i) of Regulation 1598 as subdivisions (e) through (j), respectively, update the regulation's internal cross-references so that they correctly refer to the re-numbered subdivisions, and update Regulation 1598's reference note to include a citation to RTC section 6357.7. The Board has determined that these changes to Regulation 1598 are appropriate for processing under Rule 100 because they make the regulation consistent with a statutory change, renumber current subdivisions, update the regulation's internal cross-references, and update the regulation's reference note, and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

In addition, Regulation 1598, subdivision (d) currently contains two examples illustrating the formula for calculating the amount of sales tax reimbursement included in the total price per gallon of gasoline and other motor vehicle fuels. These examples utilize hypothetical fuel prices, excise tax rates, and sales tax rates and have not been updated since at least 1996. Therefore, the Board proposes to update the sales price per gallon of gasoline net of all taxes, the state excise tax rate, and the sales tax rate in example (A), pursuant to Rule 100, so that the example utilizes the state excise tax rate of \$0.353 effective on July 1, 2010;² the example's sales tax rate incorporates the new partial exemption from sales and use tax provided by RTC section 6357.7 (cumulative statewide 8.25% rate

¹ A breakdown of the cumulative statewide 8.25 percent sales and use tax rate is included in attachment A.

² See RTC section 7360 as amended by Statutes 2010, chapter 11, section 5, and the chart of fuel tax rates included in attachment B.

minus partial exemption from 6% of that rate); and the total price per gallon of gasoline used in the example actually approaches current selling prices. The Board also proposes to update the sales price per gallon of diesel fuel net of all taxes, state sales tax rate, and the state excise tax rate in example (B), pursuant to Rule 100, so that the example utilizes a 9 percent sales tax rate that falls within the 8.25 percent and 10.75 percent rates applicable throughout California due to the imposition of district taxes in some areas;³ the example utilizes the .136 percent state excise tax rate that will apply beginning January 1, 2011;⁴ and the total price per gallon of diesel fuel used in the example actually approaches current selling prices. The Board has determined that the changes to the examples currently contained in Regulation 1598, subdivision (d) are appropriate for processing under Rule 100 because they do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. This is because the changes merely update hypothetical fuel prices, excise tax rates, and sales tax rates utilized in the examples and the tax rates used in the examples are not prescriptive, but are for "purposes of the example(s) only," as expressly set forth in Regulation 1598.

B. Proposed Changes to Regulation 1598

Proposed changes to Regulation 1598:

Regulation 1598. Motor Vehicle and Aircraft Fuels.

(a) In General. . . . (unchanged).

(b) Exceptions.

(1) Neither the sales tax nor the use tax applies to the sale or use of motor vehicle fuel used in propelling aircraft, the distribution of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code. This type of fuel includes gasoline and similar fuels but does not include aircraft jet fuel. (See subdivision (hg) for requirements for supporting aircraft fuel exemptions.)

(2) . . . (unchanged).

(c) Measure of Tax.

(1) The measure of tax includes:

(A) . . . (unchanged),

(B) . . . (unchanged), and

(C) . . . (unchanged).

(2) The measure of tax does not include:

(A) . . . (unchanged):

³ A schedule of district taxes is included in attachment C.

⁴ See RTC section 60050, subdivision (b)(1) as amended by Statutes 2010, chapter 11, section 8.

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

4. . . . (unchanged).

5. . . . (unchanged).

(B) . . . (unchanged).

(C) The federal retailer's excise taxes on:

1. . . . (unchanged).

2. . . . (unchanged).

3. . . . (unchanged).

4. . . . (unchanged).

(D) Prior to July 1, 1995, the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (ih) for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (ih) for requirements for supporting claimed exclusions.)

(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (ji).

(d) Partial Exemption for Motor Vehicle Fuel. Operative July 1, 2010, section 6357.7 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for the sale of, and the storage, use, or other consumption in this state of motor vehicle fuel. "Motor vehicle fuel" means gasoline and aviation gasoline and does not include jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel, as defined in the Motor Vehicle Fuel Tax Law.

The partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 of the Revenue and Taxation Code (cumulative statewide 6% sales and use tax rate), but does not apply to the taxes imposed or administered pursuant to sections 6051.2, 6051.5, 6201.2, and 6201.5 of the Revenue and Taxation Code, the Bradley-Burns Uniform

Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(ed) Sales of Motor Vehicle Fuel on Sales Tax-Included Basis. Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

“The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill.”

Following are examples of prices computed on a tax-included basis:

(A)	Sales price per gallon of gasoline net of all taxes	\$2.4351 .153
	Federal excise tax* .....	.184
	State excise tax* .....	.353 180
	Total	\$2.9721 .517
	*Sales tax reimbursement computed at <u>27 1/4%</u> * of \$2.9721 .517 ....	.067 110
	Total tax-included price per gallon	\$3.0391 .627
(B)	Sales price per gallon of diesel fuel net of all taxes*	\$2.3551 .103
	Federal excise tax* .....	.244
	Total	\$2.5991 .347
	*Sales tax reimbursement computed at <u>97 1/4%</u> * of \$2.5991 .347 ....	.234 098
	State excise tax .....	.136 180
	Total tax-included price per gallon	\$2.9691 .625

* The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.

(fe) Application of Sales or Use Tax to Fuel Furnished With Leased Vehicles or Aircraft. . . .
(text unchanged).

(gf) Refunds of Excise Tax

(1) Federal Excise Taxes. . . . (unchanged).

(2) Sales or Use Tax Refunds. . . . (unchanged).

(hg) Supporting Data for Aircraft Fuel Exemptions. . . . (unchanged).

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in subdivision (hg)(2). If a sales invoice is used, it must show the purchaser's name and address, the aircraft identification

number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) . . . (unchanged).

(ih) Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. Sellers of gasoline, diesel or jet fuel for which the purchaser claims exclusion from the measure of tax under subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision (ih)(1).

(1) . . . (unchanged).

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (ih)(1) and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

(ji) Alternate Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who is qualified under subdivision (ji)(1) may issue a certificate in substantially the form set forth in subdivision (ji)(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

(1) A purchaser is qualified and may issue a certificate under subdivision (ji) if satisfying all the following requirements:

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011, 6012, 6245.5, 6357, 6357.5, 6357.7, 6385 and 6423, Revenue and Taxation Code.

ATTACHMENT A

Rate	Jurisdiction	Purpose	Authority
4.75%	State	Goes to State's General Fund (Total General Fund is 6%)	Revenue and Taxation Code Sections 6051, 6201
0.25%	State	Goes to State's General Fund (Total General Fund is 6%)	Revenue and Taxation Code Sections 6051.3, 6201.3 (Inoperative 1/1/01 – 12/31/01)
1.00%	State	Goes to State's General Fund (Total General Fund is 6%)	Revenue and Taxation Code Sections 6051.7, 6201.7 (Operative 4/1/09)
0.25%	State	Goes Towards State's Fiscal Recovery Fund, to pay off Economic Recovery Bonds (2004)	Revenue and Taxation Code Sections 6051.5, 6201.5 (Operative 7/1/04)
0.50%	State	Goes to Local Public Safety Fund to support local criminal justice activities (1993)	Section 35, Article XIII, State Constitution
0.50%	State	Goes to Local Revenue Fund to support local health and social services programs (1991 Realignment)	Revenue and Taxation Code Sections 6051.2, 6201.2
1.00%	Local	0.25% Goes to county transportation funds 0.75% Goes to city and county operations	Revenue and Taxation Code Section 7203.1 (Operative 7/1/04)
Total:			
8.25%	State/Local	Total Statewide Base Sales and Use Tax Rate	

ATTACHMENT B

1. Aircraft Jet Fuel

Effective Date	Rate Per Gallon
December 1, 1969	\$.02

2. Childhood Lead Poisoning Prevention Fee

For assessment years after 2000, the fee is determined by the Department of Health Services based on market share and there is no longer a per gallon rate.

Prod. Dist. Year	Fee Assessment Year	Fee Due Year	Rate Per Gallon Architectural Coating	Rate Per Gallon Petroleum Industry	Rate Per Pound Ambient Air Industry
1999	2000	2001	\$.022757	\$.000697	\$.757024
1998	1999	2000	\$.026053	\$.000756	\$.757024
1997	1998	1999	\$.030614	\$.000754	\$.757245
1996	1997	1998	\$.032380	\$.000740	\$.757200
1995	1996	1997	\$.037400	\$.000755	\$.757200
1994	1995	1996	\$.033481	\$.000760	\$.726618
1993	1994	1995	\$.030947	\$.000764	\$.756899
1992	1993	1994	\$.030859	\$.000758	\$.756981
1991	1992	1993	\$.023880	\$.000762	\$.769199

3. Diesel Fuel Tax

Effective Date	Rate Per Gallon
July 1, 1995	\$.18

Note: Biodiesel, waste vegetable oil (wvo), and straight vegetable oil (svo) are taxed at the same rate as diesel fuel.

4. International Fuel Tax Agreement (IFTA) including California Interstate User Diesel Fuel Tax (DI) Program

Effective Date	Diesel Fuel Tax	Component b	Rate Per Gallon
January 1, 2010	\$.18	\$.193	\$.373
January 1, 2009	\$.18	\$.257	\$.437
January 1, 2008	\$.18	\$.186	\$.366
January 1, 2007	\$.18	\$.187	\$.367
January 1, 2006	\$.18	\$.150	\$.330
January 1, 2005	\$.18	\$.115	\$.295
January 1, 2004	\$.18	\$.098	\$.278
January 1, 2003	\$.18	\$.083	\$.263
January 1, 2002	\$.18	\$.102	\$.282
January 1, 2001	\$.18	\$.091	\$.271
January 1, 2000	\$.18	\$.070	\$.250
January 1, 1999	\$.18	\$.071	\$.251
January 1, 1998	\$.18	\$.083	\$.263
July 1, 1995	\$.18	\$.0	\$.180

5. Motor Vehicle Fuel License Tax (Operative Through December 31, 2001).

Effective Date	Rate Per Gallon
January 1, 1994	\$.18
January 1, 1993	\$.17
January 1, 1992	\$.16
January 1, 1991	\$.15
August 1, 1990	\$.14
January 1, 1983	\$.09
October 1, 1963	\$.07
July 1, 1953	\$.06
July 1, 1947	\$.045
July 29, 1927	\$.03
October 1, 1923	\$.02

6. Motor Vehicle Fuel Tax (Operative On or After January 1, 2002)

Effective Date	Rate Per Gallon
July 1, 2010	\$0.353 (excludes AV Gas)
January 1, 2002	\$.018

Aviation Gasoline (AV Gas)

Effective Date	Rate Per Gallon
January 1, 2002	\$0.18

7. Oil Spill Response, Prevention, and Administration Fee**Oil Spill Prevention and Administration Fee**

Effective Date	Rate Per Barrel
January 20, 2003	\$.05
September 24, 1990	\$.04

Oil Spill Response Fee

Effective Date	Rate Per Barrel	
September 24, 1990	\$.25	Not collected currently. Fund maximum reached with January 1991 filing.

8. Underground Storage Tank Maintenance Fee

Effective Date	Rate Per Gallon
January 1, 2010	\$.020
January 1, 2006	\$.014
January 1, 2005	\$.013
January 1, 1997	\$.012
January 1, 1996	\$.009
January 1, 1995	\$.007
January 1, 1991	\$.006

9. Use Fuel Tax**Kerosene, Distillate, & Stove Oil (includes Diesel prior to 7/1/95)**

Effective Date	Rate Per Gallon	
July 1, 1995	\$.18	Diesel fuel tax is removed from the Use Fuel Tax Law to the new Diesel Fuel Tax Law.
January 1, 1994	\$.18	
January 1, 1993	\$.17	
January 1, 1992	\$.16	
January 1, 1991	\$.15	
August 1, 1990	\$.14	
January 1, 1983	\$.09	
July 1, 1953	\$.07	
July 1, 1947	\$.045	
July 1, 1937	\$.03	

Liquid Petroleum Gas

Effective Date	Rate Per Gallon
October 1, 1966	\$.06
October 1, 1963	\$.07
January 1, 1959	\$.06

Compressed Natural Gas

Effective Date	Rate Per 100 Cubic Feet
January 1, 1971	\$.07

Liquid Natural Gas

Effective Date	Rate Per Gallon
January 1, 1971	\$.06

Alcohol Fuels (Rate is » Diesel Tax Rate)

Effective Date	Rate Per Gallon
January 1, 1994	\$.09
January 1, 1993	\$.085
January 1, 1992	\$.08
January 1, 1991	\$.075
August 1, 1990	\$.07
January 1, 1983	\$.045
September 29, 1981	\$.035

Annual Flat Rate Tax (January 1, 1988) Per Vehicle

All passenger car and other vehicles 4,000 lbs. or less	\$36
More than 4,000 lbs. but less than 8,001 lbs.	\$72
More than 8,000 lbs. but less than 12,001 lbs.	\$120
12,000 lbs. or more	\$168

10. Tax & Fees Included in the Retail Price of a Gallon of Motor Fuel at a Service Station.
 Effective Date: January 1, 2010

	Gasoline	Diesel
Federal Fuel Tax	\$.184	\$.244
State Fuel Tax	\$.18	\$.18
State Underground Storage Tank Fee (UST)	\$.020	\$.020
Sales Tax (1)	Determined at the Retail Location	

ATTACHMENT C

District Taxes, Rates, and Effective Dates

(City): Indicates district tax applies within the city limits and is in addition to other applicable state, local and transit district taxes.
Certain cities provide addresses located within a special taxing jurisdiction.

Tax Area	District Name and Initials	Rate	Effective Date	End Date
Alameda County	Alameda County Essential Health Care Services Transactions and Use Tax (ACHC)	0.50%	07-01-04	
	Alameda County Transportation Improvement Authority (ACTI)	0.50%	04-01-02	
	Alameda County Transportation Authority (ACTA)	0.50%	04-01-87	03-31-02
	Bay Area Rapid Transit District (BART)	0.50%	04-01-70	
Amador County	Amador County Fire Protection and Emergency Med. Services Transactions and Use Tax (AMCG)	0.50%	04-01-09	
Colusa County				
Williams (City)	City of Williams Transactions and Use Tax (WLMS)	0.50%	04-01-07	
Contra Costa County	Contra Costa Transportation Authority (CCTA)	0.50%	04-01-89	
	Bay Area Rapid Transit District (BART)	0.50%	04-01-70	
El Cerrito (City)	City of El Cerrito Street Improvements Transactions and Use Tax (ECSI)	0.50%	07-01-08	
Pinole (City)	City of Pinole Transactions and Use Tax (PNLE)	0.50%	04-01-07	
Richmond (City)	City of Richmond Transactions and Use Tax (RMGT)	0.50%	04-01-05	
Del Norte County	Del Norte County District (DNCD)	0.50%	07-01-93	06-30-98
El Dorado County				
Placerville (City)	City of Placerville Public Safety Transactions and Use Tax (PLPS)	0.25%	04-01-99	
South Lake Tahoe (City)	City of South Lake Tahoe Transactions and Use Tax (SLTG)	0.50%	04-01-05	
Fresno County	Fresno County Public Library Transactions and Use Tax (FCPL)	0.125%	04-01-99	
Fresno County	Fresno County Transportation Authority (FCTA)	0.50%	07-01-87	
Fresno County	Fresno County Zoo Authority (FCZA)	0.10%	04-01-05	
Clovis (City)	City of Clovis Public Safety Transactions and Use Tax (CCPS)	0.30%	04-01-00	9-30-08
Reedley (City)	City of Reedley Public Safety Transactions and Use Tax (RDPS)	0.50%	07-01-08	
Sanger (City)	City of Sanger Public Safety Transactions and Use Tax (SGPS)	0.75%	07-01-08	
Selma (City)	City of Selma Public Safety Transactions and Use Tax (SLMA)	0.50%	04-01-08	
Humboldt County				
Arcata (City)	City of Arcata Transactions and Use Tax (ARGF)	0.75%	04-01-09	
Eureka (City)	City of Eureka Transactions and Use Tax (ERKA)	0.25%	04-01-09	
Trinidad (City)	City of Trinidad Transactions and Use Tax (TRGF)	0.75%	04-01-09	
Trinidad (City)	City of Trinidad General Revenue Transactions and Use Tax (TDGF)	1.00%	10-01-04	12-31-08
Imperial County	Imperial County Local Transportation Authority (IMTA)	0.50%	04-01-90	
Calexico (City)	Calexico Heffernan Memorial Hospital District (CXHD)	0.50%	10-01-92	03-31-06
Inyo County	Inyo County Rural Counties Transactions Tax (INRC)	0.50%	10-01-88	
Kern County				
Arvin (City)	City of Arvin Transactions and Use Tax (ARVN)	1.00%	04-01-09	
Delano (City)	City of Delano Transactions and Use Tax (DLNO)	1.00%	04-01-08	
Lake County				
Clearlake (City)	City of Clearlake Public Safety Transactions and Use Tax (CLPS)	0.50%	07-01-95	
Lakeport (City)	City of Lakeport Transactions and Use Tax (LPGT)	0.50%	04-01-05	
Los Angeles County	Los Angeles County Transportation Commission (LATC)	0.50%	04-01-91	
	Los Angeles County Transportation Commission (LACT)	0.50%	07-01-82	
	Los Angeles County Metro Transportation Authority (LAMT)	0.50%	07-01-09	
Avalon (City)	City of Avalon Municipal Hospital and Clinic Tax (AMHC)	0.50%	10-01-00	
El Monte (City)	City of El Monte Transactions and Use Tax (EMGF)	0.50%	04-01-09	
Inglewood (City)	City of Inglewood Vital City Services Transactions and Use Tax (IGWD)	0.50%	04-01-07	
Pico Rivera (City)	City of Pico Rivera Transactions and Use Tax (PCRV)	1.00%	04-01-09	
South Gate (City)	City of South Gate Transactions and Use Tax (SGTE)	1.00%	10-01-08	
Madera County	Madera County 2006 Transportation Authority (MCTC)	0.50%	04-01-07	
	Madera County Transportation Authority (MCTA)	0.50%	10-01-90	09-30-05
Marin County	Transportation Authority Marin County (TAMC)	0.50%	04-01-05	
	Sonoma-Marín Area Rail Transit District (SMRT)	0.25%	04-01-09	
San Rafael (City)	City of San Rafael Transactions and Use Tax (RFEL)	0.50%	04-01-06	
Mariposa County	Mariposa County Healthcare Transactions and Use Tax (MCHC)	0.50%	04-01-05	
	Mariposa County Healthcare Authority (MCHA)	0.50%	07-01-00	06-30-04
Mendocino County				
Fort Bragg (City)	City of Fort Bragg Maintain City Streets Transactions and Use Tax (FBCS)	0.50%	01-01-05	
Point Arena (City)	City of Point Arena Transactions and Use Tax (PARS)	0.50%	04-01-04	

District Taxes, Rates, and Effective Dates

Tax Area	District Name and Initials	Rate	Effective Date	End Date
Ukiah (City)	City of Ukiah Transactions and Use Tax (UKGT)	0.50%	10-01-05	
Willits (City)	City of Willits Road System Transactions and Use Tax (WCRS)	0.50%	10-01-03	
Merced County				
Gustine (City)	City of Gustine Community Enhancement to Services Transactions and Use Tax (GSTG)	0.50%	04-01-10	
Los Banos (City)	City of Los Banos Public Safety Transactions and Use Tax (LBPS)	0.50%	04-01-05	
Merced (City)	City of Merced Transactions and Use Tax (MRCD)	0.50%	04-01-06	
Mono County				
Mammoth Lakes (City)	City of Mammoth Lakes Parks, Recreation, and Trails Transactions and Use Tax (MLPR)	0.50%	10-01-08	
Monterey County				
Del Rey Oaks (City)	City of Del Rey Oaks Transactions and Use Tax (DLRY)	1.00%	04-01-07	
Pacific Grove (City)	City of Pacific Grove Transactions and Use Tax (PGRV)	1.00%	10-01-08	
Salinas (City)	City of Salinas Transactions and Use Tax (SLNS)	0.50%	04-01-06	
Sand City (City)	City of Sand City General Purpose Transactions and Use Tax (SAND)	0.50%	04-01-05	
Seaside (City)	City of Seaside Transactions and Use Tax (SEAS)	1.00%	07-01-08	
Napa County	Napa County Flood Protection Authority Tax (NCFP)	0.50%	07-01-98	
Nevada County	Nevada County Public Library Transactions and Use Tax (NVPL)	0.125%	10-01-98	
Nevada City (City)	City of Nevada City Street Improvements Transactions and Use Tax (NVSI)	0.50%	04-01-07	
Truckee (City)	Town of Truckee Road Maintenance Transactions and Use Tax (TRSR)	0.50%	10-01-98	
Orange County	Orange County Local Transportation Authority (OCTA)	0.50%	04-01-91	
La Habra (City)	City of La Habra Transactions and Use Tax (LHBR)	0.50%	04-01-09	
Laguna Beach (City)	City of Laguna Beach Temporary Transactions and Use Tax (LGBH)	0.50%	07-01-06	06-30-09
Riverside County	Riverside County Transportation Commission (RCTC)	0.50%	07-01-89	
Sacramento County	Sacramento Transportation Authority (STAT)	0.50%	04-01-89	
Galt (City)	City of Galt Public Safety Transactions and Use Tax (GLTS)	0.50%	04-01-09	
San Benito County	San Benito County General Fund Augmentation (SBTU)	0.50%	01-01-94	12-31-97
	San Benito County Council of Governments (SBCG)	0.50%	01-01-89	12-31-98
Hollister (City)	City of Hollister Transactions and Use Tax (HLST)	1.00%	04-01-08	
San Juan Bautista (City)	City of San Juan Bautista Transactions and Use Tax (SJBG)	0.75%	04-01-05	
San Bernardino County	San Bernardino County Transportation Authority (SBER)	0.50%	04-01-90	
Montclair (City)	City of Montclair Transactions and Use Tax (MTGR)	0.25%	04-01-05	
San Bernardino (City)	City of San Bernardino Transactions and Use Tax (SBRN)	0.25%	04-01-07	
San Diego County	San Diego County Regional Transportation Commission (SDTC)	0.50%	04-01-88	
El Cajon (City)	City of El Cajon Service Preservation Transactions and Use Tax (ECGF)	0.50%	04-01-09	
El Cajon (City)	City of El Cajon Public Safety Facilities Transactions and Use Tax (ECPS)	0.50%	04-01-05	
La Mesa (City)	City of La Mesa Transactions and Use Tax (LSMA)	0.75%	04-01-09	
National City (City)	City of National City Transactions and Use Tax (NCGT)	1.00%	10-01-06	
Vista (City)	City of Vista Transactions and Use Tax (VSTA)	0.50%	04-01-07	
San Francisco City and County	San Francisco County Public Finance Authority (SFPF)	0.25%	10-01-93	
	San Francisco County Transportation Authority (SFTA)	0.50%	04-01-90	
	Bay Area Rapid Transit District (BART)	0.50%	04-01-70	
San Joaquin County	San Joaquin Transportation Authority (SJTA)	0.50%	04-01-91	
Manteca (City)	City of Manteca Public Safety Transactions and Use Tax (MTPS)	0.50%	04-01-07	
Stockton (City)	City of Stockton Public Safety Transactions and Use Tax (SPFG)	0.25%	04-01-05	
San Luis Obispo County				
Arroyo Grande (City)	City of Arroyo Grande Transactions and Use Tax (ARGD)	0.50%	04-01-07	
Grover Beach (City)	City of Grover Beach Transactions and Use Tax (GRBH)	0.50%	04-01-07	
Morro Bay (City)	City of Morro Bay Transactions and Use Tax (MRBY)	0.50%	04-01-07	
Pismo Beach (City)	City of Pismo Beach Transactions and Use Tax (PSMO)	0.50%	10-01-08	
San Luis Obispo (City)	City of San Luis Obispo Essential Services Transactions and Use Tax (SLOG)	0.50%	04-01-07	
San Mateo County	San Mateo County Transportation Authority (SMTA)	0.50%	01-01-89	
	San Mateo County Transit District (SMCT)	0.50%	07-01-82	
San Mateo (City)	City of San Mateo Transactions and Use Tax (SMTG)	0.25%	04-01-10	
Santa Barbara County	Santa Barbara County Local Transportation Authority (SBAB)	0.50%	04-01-90	
Santa Clara County	Santa Clara County Transactions and Use Tax (SCGF)	0.50%	04-01-97	03-31-06
	Santa Clara County Transit District (SCCT)	0.50%	10-01-76	
	Santa Clara County Valley Transportation Authority (SCVT)	0.50%	04-01-06	

District Taxes, Rates, and Effective Dates

Tax Area	District Name and Initials	Rate	Effective Date	End Date
Campbell (City)	City of Campbell Vital City Services, Maintenance and Protection Transactions and Use Tax (CMPL)	0.25%	04-01-09	
Santa Cruz County	Santa Cruz County Public Library Transactions and Use Tax (SZPL)	0.25%	04-01-97	
	Santa Cruz County Earthquake Recovery Bond (SCER)	0.50%	04-01-91	03-31-97
	Santa Cruz Metropolitan Transit District (SCMT)	0.50%	01-01-79	
Capitola (City)	City of Capitola Transactions and Use Tax (CPGT)	0.25%	04-01-05	
Santa Cruz (City)	City of Santa Cruz Replacement Transactions and Use Tax (STCZ)	0.50%	04-01-07	
Santa Cruz (City)	City of Santa Cruz Transactions and Use Tax (SZGT)	0.25%	07-01-04	03-31-07
Scotts Valley (City)	City of Scotts Valley Transactions and Use Tax (SVGT)	0.50%	04-01-06	03-31-09
Scotts Valley (City)	City of Scotts Valley Transactions and Use Tax (SVGF)	0.25%	04-01-09	
Watsonville (City)	City of Watsonville Transactions and Use Tax (WTVL)	0.25%	04-01-07	
Solano County	Solano County Public Library Transactions and Use Tax (SLPL)	0.125%	10-01-98	
Sonoma County	Sonoma County Open Space Authority (SCOS)	0.25%	04-01-91	
	Sonoma County Transportation Authority (SNTA)	0.25%	04-01-05	
	Sonoma-Marin Area Rail Transit District (SMRT)	0.25%	04-01-09	
Santa Rosa (City)	City of Santa Rosa Public Safety Transactions and Use Tax (SRPS)	0.25%	04-01-05	
Sebastopol (City)	City of Sebastopol Transactions and Use Tax (SEGR)	0.125%	04-01-03	03-31-05
Sebastopol (City)	City of Sebastopol Community Transactions and Use Tax (SEBG)	0.25%	04-01-05	
Stanislaus County	Stanislaus County Library Transactions and Use Tax (STCL)	0.125%	07-01-95	
Ceres (City)	City of Ceres Public Safety Transactions and Use Tax (CRPS)	0.50%	04-01-08	
Tulare County	Tulare County Transportation Authority (TCTA)	0.50%	04-01-07	
	Tulare County Transactions and Use Tax (TCTU)	0.50%	10-01-95	12-31-97
Dinuba (City)	City of Dinuba Police and Fire Protection Transactions and Use Tax (DNBA)	0.75%	04-01-06	
Farmersville (City)	City of Farmersville Transactions and Use Tax (FMGT)	0.50%	04-01-05	
Porterville (City)	City of Porterville Public Safety, Police and Fire Transactions and Use Tax (PTVL)	0.50%	04-01-06	
Tulare (City)	City of Tulare Transactions and Use Tax (TLRE)	0.50%	04-01-06	
Visalia (City)	City of Visalia Transactions and Use Tax (VPST)	0.25%	07-01-04	
Tuolumne County				
Sonora (City)	City of Sonora Transactions and Use Tax (SPFW)	0.50%	01-01-05	
Ventura County				
Oxnard (City)	City of Oxnard Vital Services Transactions and Use Tax (OXND)	0.50%	04-01-09	
Port Hueneme (City)	City of Port Hueneme Transactions and Use Tax (PTHN)	0.50%	04-01-09	
Yolo County				
Davis (City)	City of Davis Transactions and Use Tax (DAGT)	0.50%	07-01-04	
West Sacramento (City)	City of West Sacramento Transactions and Use Tax (WSTU)	0.50%	04-01-03	
Woodland (City)	City of Woodland Transactions and Use Tax (WDLT)	0.50%	10-01-06	
Woodland (City)	City of Woodland General Revenue Transactions and Use Tax (WOGT)	0.50%	07-01-00	06-30-06

Assembly Bill No. 6

CHAPTER 11

An act to add Section 41204.2 to the Education Code, and to amend Sections 7360 and 60050 of, and to add Sections 6051.8, 6201.8, 6357.7, 7361.1, and 7653.1 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor March 22, 2010. Filed with
Secretary of State March 22, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 6, Committee on Budget. Sales and use taxes: motor vehicle fuel tax: diesel fuel tax.

(1) Existing law requires the Director of Finance to make certain adjustments in one of the formulas used in computing the state's obligation under the California Constitution to provide funding for school districts and community college districts so as to ensure that the modifications in property tax revenue allocation requirements that were made by prior enactments do not have a net fiscal impact on school districts or community college districts, or upon the state's funding obligation to those districts.

This bill would additionally specify adjustments on the calculation of the state's constitutional funding obligations that are related to the change in taxes made by this bill.

(2) The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. Tangible personal property includes motor vehicle fuel, commonly referred to as gasoline, and including aviation gasoline. Existing law, pursuant to Article XIX B of the California Constitution, requires a portion of the revenues from the sales and use tax on the sale of, and the storage, use, or other consumption of, motor vehicle fuel to be deposited in the Transportation Investment Fund to be used for specified highway, local street and road, and mass transportation purposes.

This bill would, on and after July 1, 2010, exempt from those taxes the gross receipts from the sale of, and the storage, use, or other consumption in this state of, motor vehicle fuel, thereby eliminating funding from this revenue source for those transportation programs. This exemption would not apply to local sales and use taxes imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law or transactions and use taxes imposed in accordance with the Transactions and Use Tax Law, and specified state sales and use taxes.

This bill, on or after July 1, 2011, would impose an additional 1.75% tax on the sale of, and the storage, use, or other consumption in this state of, diesel fuel.

(3) The Motor Vehicle Fuel Tax Law and the Diesel Fuel Tax Law each impose a tax at the rate of \$0.18 per gallon on the removal, entry, sale, delivery, or specified use of motor vehicle fuel, which is commonly referred to as gasoline, including aviation gasoline, and diesel fuel, respectively, and the Motor Vehicle Fuel Tax Law also imposes a tax at the rate of \$0.02 per gallon of aircraft jet fuel sold to a fuel user or used by a dealer. Article XIX of the California Constitution requires state-imposed excise tax revenues from fuel used in motor vehicles upon public streets and highways to be used solely for highway and mass transit guideway purposes.

This bill would increase the rate of tax on motor vehicle fuel of \$0.18 per gallon by an additional \$0.173 per gallon on and after July 1, 2010, as specified. The bill would impose a floor stock tax equal to \$0.173 per gallon for the privilege of storing motor vehicle fuel on July 1, 2010. Beginning with the 2011–12 fiscal year, and each fiscal year thereafter, the bill would require the State Board of Equalization to annually adjust the motor vehicle fuel tax rate consistent with the requirement that the estimated revenues from the motor vehicle fuel tax increase shall not exceed the estimated revenues attributable to the exemption from sales and use tax for the sale of, or the storage, use, or other consumption of, motor vehicle fuel, as provided.

This bill would, on July 1, 2011, reduce the rate of tax on diesel fuel from \$0.18 per gallon to \$0.136 per gallon, subject to adjustment, as specified.

(4) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 8, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 8, 2010, pursuant to the California Constitution.

(5) This bill would take effect immediately as a tax levy.

The people of the State of California do enact as follows:

SECTION 1. Section 41204.2 is added to the Education Code, to read:
41204.2. The Director of Finance shall adjust “the percentage of General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986–87” for purposes of applying paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution in a manner that ensures that the shift in General Fund revenues pursuant to Sections 6051.8, 6201.8, 6357.7, and 7361.1, subdivision (b) of Section 7360, and subdivision (b) of Section 60050 of the Revenue and Taxation Code, as those provisions were enacted in the 2009–10 Eighth Extraordinary Session, shall have no net fiscal impact upon the amounts

that are otherwise required to be applied by the state for the support of school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution.

SEC. 2. Section 6051.8 is added to the Revenue and Taxation Code, to read:

6051.8. (a) In addition to the taxes imposed by this part, for the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of 1.75 percent of the gross receipts of any retailer from the sale of all diesel fuel, as defined in Section 60022, sold at retail in this state on and after the operative date of this subdivision.

(b) Subdivision (a) shall become operative on July 1, 2011.

SEC. 3. Section 6201.8 is added to the Revenue and Taxation Code, to read:

6201.8. (a) In addition to the taxes imposed by this part, an excise tax is hereby imposed on the storage, use, or other consumption in the state of diesel fuel, as defined in Section 60022, at the rate of 1.75 percent of the sales price of the diesel fuel on and after the operative date of this subdivision.

(b) Subdivision (a) shall become operative on July 1, 2011.

SEC. 4. Section 6357.7 is added to the Revenue and Taxation Code, to read:

6357.7. (a) On and after July 1, 2010, there are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, motor vehicle fuel, as defined in Section 7326.

(b) (1) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exemption established by this section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(2) The exemption established by this section shall not apply with respect to any tax levied pursuant to Section 6051.2, 6051.5, 6201.2, or 6201.5, or pursuant to Section 35 of Article XIII of the California Constitution.

(c) On and after July 1, 2010, the State Board of Equalization and the Department of Finance shall recognize that the state no longer receives state sales and use tax revenues from the sale of, and the storage, use, or other consumption of, motor vehicle fuel for purposes of any estimates required to be performed under paragraphs (1) and (2) of subdivision (a) of Section 7102, and Section 7104.2.

SEC. 5. Section 7360 of the Revenue and Taxation Code is amended to read:

7360. (a) (1) A tax of eighteen cents (\$0.18) is hereby imposed upon each gallon of fuel subject to the tax in Sections 7362, 7363, and 7364.

(2) If the federal fuel tax is reduced below the rate of nine cents (\$0.09) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated

correspondingly, the tax rate imposed by paragraph (1), on and after the date of the reduction, shall be recalculated by an amount so that the combined state rate under paragraph (1) and the federal tax rate per gallon equal twenty-seven cents (\$0.27).

(3) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be so exempt under this section.

(b) (1) On and after July 1, 2010, in addition to the tax imposed by subdivision (a), a tax is hereby imposed upon each gallon of fuel subject to the tax in Sections 7362, 7363, and 7364 in an amount equal to $17\frac{3}{10}$ cents (\$0.173) per gallon.

(2) For the 2011–12 fiscal year and each fiscal year thereafter, the board shall, on or before March 1 of the fiscal year immediately preceding the applicable fiscal year, adjust the rate in paragraph (1) in that manner as to generate an amount of revenue that will equal the amount of revenue loss attributable to the exemption provided by Section 6357.7, based on estimates made by the board.

(3) In order to maintain revenue neutrality for each year, beginning with the rate adjustment on or before March 1, 2012, the adjustment under paragraph (2) shall also take into account the extent to which the actual amount of revenues derived pursuant to this subdivision and, as applicable, Section 7361.1, the revenue loss attributable to the exemption provided by Section 6357.7 resulted in a net revenue gain or loss for the fiscal year ending prior to the rate adjustment date on or before March 1.

(4) The intent of paragraphs (2) and (3) is to ensure that the act adding this subdivision and Section 6357.7 does not produce a net revenue gain in state taxes.

SEC. 6. Section 7361.1 is added to the Revenue and Taxation Code, to read:

7361.1. (a) For the privilege of storing, for the purpose of sale, each supplier, wholesaler, and retailer owning 1,000 or more gallons of tax-paid motor vehicle fuel on July 1, 2010, shall pay a storage tax of $17\frac{3}{10}$ cents (\$0.173) per gallon of tax-paid motor vehicle fuel in storage according to the volumetric measure thereof.

(b) For purposes of this section:

(1) “Owning” means having title to the motor vehicle fuel.

(2) “Retailer” means any person who sells motor vehicle fuel in this state to a person who subsequently uses the motor vehicle fuel.

(3) “Storing” includes the ownership or possession of tax-paid motor vehicle fuel outside of the bulk transfer/terminal system, including the holding of tax-paid motor vehicle fuel for sale at wholesale or retail locations stored in a container of any kind, including railroad tank cars and trucks or trailer cargo tanks. “Storing” also includes tax-paid motor vehicle fuel purchased from and invoiced by the seller, and tax-paid motor vehicle fuel removed from a terminal or entered into by a supplier, prior to the date specified in subdivision (a) and in transit on that date.

(4) "Wholesaler" means any person who sells motor vehicle fuel in this state for resale to a retailer or to a person who is not a retailer and subsequently uses the motor vehicle fuel.

SEC. 7. Section 7653.1 is added to the Revenue and Taxation Code, to read:

7653.1. On or before August 31, 2010, each person subject to the storage tax imposed under Section 7361.1 shall prepare and file with the board, in a form prescribed by the board, a return showing the total number of gallons of tax-paid motor vehicle fuel owned by the person on July 1, 2010, the amount of the storage tax, and any other information that the board deems necessary for the proper administration of this part. The return shall be accompanied by a remittance payable to the Controller in the amount of tax due.

SEC. 8. Section 60050 of the Revenue and Taxation Code is amended to read:

60050. (a) (1) A tax of eighteen cents (\$0.18) is hereby imposed upon each gallon of diesel fuel subject to the tax in Sections 60051, 60052, and 60058.

(2) If the federal fuel tax is reduced below the rate of fifteen cents (\$0.15) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the tax rate imposed by paragraph (1), including any reduction or adjustment pursuant to subdivision (b), on and after the date of the reduction, shall be increased by an amount so that the combined state rate under paragraph (1) and the federal tax rate per gallon equal what it would have been in the absence of the federal reduction.

(3) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be exempt under this section.

(b) (1) On July 1, 2011, the tax rate specified in paragraph (1) of subdivision (a) shall be reduced to 13.6 cents (\$0.136) and every July 1 thereafter shall be adjusted pursuant to paragraphs (2) and (3).

(2) For the 2012–13 fiscal year and each fiscal year thereafter, the board shall, on or before March 1 of the fiscal year immediately preceding the applicable fiscal year, adjust the rate reduction in paragraph (1) in that manner as to result in a revenue loss attributable to paragraph (1) that will equal the amount of revenue gain attributable to Sections 6051.8 and 6201.8, based on estimates made by the board.

(3) In order to maintain revenue neutrality for each year, beginning with the rate adjustment on or before March 1, 2013, the adjustment under paragraph (2) shall take into account the extent to which the actual amount of revenues derived pursuant to Sections 6051.8 and 6201.8 and the revenue loss attributable to this subdivision resulted in a net revenue gain or loss for the fiscal year ending prior to the rate adjustment date on or before March 1.

(4) The intent of paragraphs (2) and (3) is to ensure that the act adding this subdivision and Sections 6051.8 and 6201.8 does not produce a net revenue gain in state taxes.

SEC. 9. This act addresses the fiscal emergency declared by the Governor by proclamation on January 8, 2010, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 10. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

O

M e m o r a n d u m

To : Mr. Ramon J. Hirsig
Executive Director, MIC: 73

Date: June 24, 2010

From : Kristine Cazadd, Chief Counsel
Legal Department, MIC:83

*Robert J. Hirsig
for KC*

Subject : **Board Meeting, July 13-15, 2010**
Item J
Chief Counsel's Rulemaking Calendar
Regulation 1598, *Motor Vehicle and Aircraft Fuels*

Statutes 2010, chapter 11 (Assembly Bill 6 (2009-10 8th Extraordinary Session)), section 4, added Revenue and Taxation Code (RTC) section 6357.7 to provide a partial sales and use tax exemption from the retail sale of, and the storage, use, or other consumption in this state of, motor vehicle fuel, as defined in section 7326. Section 6357.7 provides that the partial exemption applies to the taxes imposed by RTC sections 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 (cumulative statewide 6% sales and use tax rate), but does not apply to the taxes imposed or administered pursuant to RTC sections 6051.2, 6051.5, 6201.2, and 6201.5, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.¹

To incorporate the new statutory provisions, we request your approval to place proposed revisions to Sales and Use Tax Regulation 1598 on the Chief Counsel's Rulemaking Calendar on July 13-15, 2010, for Board authorization to amend the regulation under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process. The revisions add a new subdivision (d), re-number current subdivisions (d) through (i) as subdivisions (e) through (j), respectively, update the internal cross-references to the re-numbered subdivisions, update the price per gallon of gasoline and diesel fuel, state excise tax rates, and sales tax rates used in the examples in re-numbered subdivision (e), and update Regulation 1598's reference note to include RTC section 6357.7. The changes are appropriate for processing under Rule 100 because they make the regulation consistent with a statutory change, update examples, and update the regulation's reference note, and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

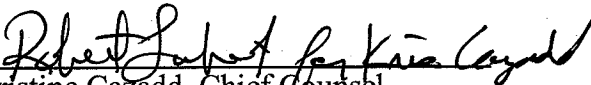
Attached is a strikeout and underlined version of the regulation illustrating the proposed revisions.


¹ For ease of reference, the sales and use tax rates are available at <http://www.boe.ca.gov/news/sp111500att.htm>.

If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at 916-324-2657.

Recommendation by:

Approved:

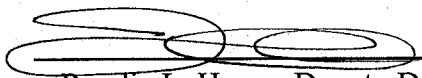

Kristine Cazadd, Chief Counsel

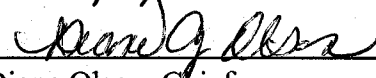

Ramon J. Hirsig, Executive Director

Approved:

BOARD APPROVED

At the 7/12/2010 Board Meeting

 for RLH
Randie L. Henry, Deputy Director
Sales and Use Tax Department


Diane Olson, Chief
Board Proceedings Division

Attachments

cc: Ms. Randie L. Henry (MIC 43)
Ms. Diane Olson (MIC 80)
Mr. Randy Ferris (MIC 82)
Mr. Bradley M. Heller (MIC 82)
Mr. Jeffrey L. McGuire (MIC 92)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Leila Hellmuth (MIC 50)
Mr. Bradley Miller (MIC 50)

Regulation 1598. Motor Vehicle and Aircraft Fuels.

Reference: Sections 6011, 6012, 6245.5, 6357, 6357.5, 6357.7, 6385, 6423, Revenue and Taxation Code.

(a) IN GENERAL. Sales tax or use tax applies to the sale or use of fuel for propelling motor vehicles or aircraft or for other purposes, except as stated below.

(b) EXCEPTIONS.

(1) Neither the sales tax nor the use tax applies to the sale or use of motor vehicle fuel used in propelling aircraft, the distribution of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code. This type of fuel includes gasoline and similar fuels but does not include aircraft jet fuel. (See subdivision ~~(h)~~(g) for requirements for supporting aircraft fuel exemptions.)

(2) Neither the sales tax nor the use tax applies to the sale or use of aircraft fuel sold to an air common carrier for immediate consumption or shipment in its business as an air common carrier on a flight whose final destination is a foreign destination (see Regulation 1621, Sales to Common Carriers).

(c) MEASURE OF TAX.

(1) The measure of tax includes:

(A) The tax imposed by the United States upon importers or producers of gasoline, diesel, and jet fuel, except as provided in (c)(2)(D) and (c)(2)(E),

(B) The tax imposed upon distributors of gasoline and similar fuels by the State of California pursuant to Part 2 of Division 2 of the Revenue and Taxation Code, and which has not been refunded, and

(C) The tax imposed by the State of California on aircraft jet fuel pursuant to Chapter 2.5 of Part 2 of Division 2 of the Revenue and Taxation Code.

(2) The measure of tax does not include:

(A) The use fuel tax, including the annual flat rate fuel tax, imposed by the State of California pursuant to Part 3 of Division 2 of the Revenue and Taxation Code on the following fuels:

1. Compressed natural gas.
2. Liquid natural gas.
3. Liquefied petroleum gas.

4. Ethanol or methanol containing not more than 15 percent gasoline or diesel fuel.

5. All other fuels not taxed under Parts 2 or 31 of Division 2 of the Revenue and Taxation Code.

(B) The diesel fuel tax, imposed by the State of California pursuant to Part 31 of Division 2 of the Revenue and Taxation Code.

(C) The federal retailer's excise taxes on:

1. Gasoline used as a fuel in noncommercial aircraft.
2. Jet fuel used as a fuel in noncommercial aircraft.
3. Diesel fuel.
4. Special motor fuels.

(D) Prior to July 1, 1995, the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i)~~(h)~~ for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Sections 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i)~~(h)~~ for requirements for supporting claimed exclusions.)

(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (j)~~(i)~~.

(d) PARTIAL EXEMPTION FOR MOTOR VEHICLE FUEL. Operative July 1, 2010, section 6357.7 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for the sale of, and the storage, use, or other consumption in this state of motor vehicle fuel. "Motor vehicle fuel" means gasoline and aviation gasoline and does not include jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel, as defined in the Motor Vehicle Fuel Tax Law.

The partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 of the Revenue and Taxation Code (cumulative statewide 6% sales and use tax rate), but does not apply to the taxes imposed or administered pursuant to sections 6051.2, 6051.5, 6201.2, and 6201.5 of the Revenue and Taxation Code, the Bradley-Burns

4. Ethanol or methanol containing not more than 15 percent gasoline or diesel fuel.
5. All other fuels not taxed under Parts 2 or 31 of Division 2 of the Revenue and Taxation Code.

(B) The diesel fuel tax, imposed by the State of California pursuant to Part 31 of Division 2 of the Revenue and Taxation Code.

(C) The federal retailer's excise taxes on:

1. Gasoline used as a fuel in noncommercial aircraft.
2. Jet fuel used as a fuel in noncommercial aircraft.
3. Diesel fuel.
4. Special motor fuels.

(D) Prior to July 1, 1995, the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i)(h) for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Sections 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i)(h) for requirements for supporting claimed exclusions.)

(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (j)(+).

(d) PARTIAL EXEMPTION FOR MOTOR VEHICLE FUEL. Operative July 1, 2010, section 6357.7 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for the sale of, and the storage, use, or other consumption in this state of motor vehicle fuel. "Motor vehicle fuel" means gasoline and aviation gasoline and does not include jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel, as defined in the Motor Vehicle Fuel Tax Law.

The partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 of the Revenue and Taxation Code (cumulative statewide 6% sales and use tax rate), but does not apply to the taxes imposed or administered pursuant to sections 6051.2, 6051.5, 6201.2, and 6201.5 of the Revenue and Taxation Code, the Bradley-Burns

Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(e)(d) SALES OF MOTOR VEHICLE FUEL ON SALES TAX-INCLUDED BASIS.

Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

"The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill."

Following are examples of prices computed on a tax-included basis:

(A)	Sales price per gallon of gasoline net of all taxes.....\$2.4351-153 Federal excise tax *..... .184 State excise tax*..... .353180 Total..... \$2.9721-517 * Sales tax reimbursement computed at 72 1/4%* of \$2.9721-517... .067410 Total tax-included price per gallon.....\$3.0391-627
(B)	Sales price per gallon of diesel fuel net of all taxes.....\$2.3551-103 Federal excise tax*..... .244 Total..... \$2.5991-347 * Sales tax reimbursement computed at 97 1/4%* of \$2.5991-347.. .234098 State excise tax *..... .136180 Total tax-included price per gallon.....\$2.9691-625

* The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.

(f)(e) APPLICATION OF SALES OR USE TAX TO FUEL FURNISHED WITH LEASED VEHICLES OR AIRCRAFT.

The lessor is the retailer of fuel furnished to a lessee of a vehicle or an aircraft if the sales price of the fuel is separately stated from the rental charge for the vehicle or aircraft. The lessor is also the retailer of fuel furnished to a lessee under a lease which is a "sale" or "purchase" (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft (such arrangements are sometimes called "wet rentals"). The lessor may purchase such fuel for resale.

The lessor is the consumer of fuel furnished to a lessee of a vehicle or an aircraft under a lease which is not a "sale" or "purchase" (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft. If a lessor of mobile transportation equipment elects under Regulation 1661 to report and pay use tax measured by the "fair rental value" of the mobile transportation equipment leased, the "fair rental value"

does not include the sale price to the lessor of fuel which is furnished under the lease to the lessee.

(g)(f) REFUNDS OF EXCISE TAX

(1) FEDERAL EXCISE TAXES.

The refund of the federal excise tax on gasoline, diesel, or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel, or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel which included that federal excise tax may file with the Board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel, or jet fuel and of the refund or credit of the federal excise tax to the purchaser.

(2) SALES OR USE TAX REFUNDS. If the sales or use tax refund is made to a person other than the consumer, the person receiving the refund must pay it to the consumer.

(h)(g) SUPPORTING DATA FOR AIRCRAFT FUEL EXEMPTIONS. Sellers of motor vehicle fuel which, at the time of sale, is exempt from sales and use tax under subdivision (b)(1), shall secure and retain documentary evidence to support their exempt sales.

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in subdivision (h)(g)(2). If a sales invoice is used, it must show the purchaser's name and address, the aircraft identification number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) The exemption with respect to retail sales of motor vehicle fuel delivered into the purchaser's storage facilities or receptacles other than the fuel tanks of aircraft, for use in propelling aircraft shall be supported by an aircraft fuel exemption certificate and an invoice. An exemption certificate in substantially the following form and signed by the purchaser shall be retained by the seller as evidence to support such exempt sales. The exemption certificate will be valid until revoked in writing by the purchaser.

does not include the sale price to the lessor of fuel which is furnished under the lease to the lessee.

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(2) The exemption with respect to retail sales of motor vehicle fuel delivered into the purchaser's storage facilities or receptacles other than the fuel tanks of aircraft, for use in propelling aircraft shall be supported by an aircraft fuel exemption certificate and an invoice. An exemption certificate in substantially the following form and signed by the purchaser shall be retained by the seller as evidence to support such exempt sales. The exemption certificate will be valid until revoked in writing by the purchaser.

Exemption Certificate for Motor Vehicle Fuel for Propelling Aircraft

This certificate may be issued by a purchaser for purchases of motor vehicle fuel (other than aircraft jet fuel) for use in propelling aircraft.

I HEREBY CERTIFY: That I am the owner or operator of the aircraft identified below; that the motor vehicle fuel which I shall purchase from _____

_____ will be used in propelling aircraft; and that the distribution of this fuel is subject to the tax imposed by the Motor Vehicle Fuel License Tax Law (Revenue and Taxation Code section 7301 et seq.) and not subject to refund.

In the event that any of this motor vehicle fuel is used for purposes other than propelling aircraft, it is understood that I am required by the Sales and Use Tax Law to report and pay tax measured by the purchase price of such fuel. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Identification Numbers of Aircraft Owned or Operated

_____	_____
_____	_____
_____	_____
_____	_____

~~(i)(4)~~ CERTIFICATE FOR EXCLUSION OF FEDERAL EXCISE TAXES FROM MEASURE OF TAX. Sellers of gasoline, diesel, or jet fuel for which the purchaser claims exclusion from the measure of tax under subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision **~~(i)(4)~~(1)**.

(1) The certificate prescribed below shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued by a purchaser whose entire fuel purchase is entitled to a direct refund or credit for the federal excise taxes for income tax purposes. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY: That I am entitled to either a direct refund or credit against my income tax for the federal excise tax paid pursuant to Internal Revenue Code Section 4081 or 4091 for the gasoline/diesel/jet fuel I shall purchase from

_____.

In the event the fuel is not used in a manner which entitles me to a direct refund or credit against my income tax or if I do not receive such refund or credit, it is understood I am required by the Sales and Use Tax Law to report and pay tax measured by the amount of federal excise tax paid to the extent the seller has not remitted sales or use tax measured by that amount. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

(i)(4) CERTIFICATE FOR EXCLUSION OF FEDERAL EXCISE TAXES FROM MEASURE OF TAX. Sellers of gasoline, diesel, or jet fuel for which the purchaser claims exclusion from the measure of tax under subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision (i)(4)(1).

(1) The certificate prescribed below shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

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I HEREBY CERTIFY: That I am entitled to either a direct refund or credit against my income tax for the federal excise tax paid pursuant to Internal Revenue Code Section 4081 or 4091 for the gasoline/diesel/jet fuel I shall purchase from

In the event the fuel is not used in a manner which entitles me to a direct refund or credit against my income tax or if I do not receive such refund or credit, it is understood I am required by the Sales and Use Tax Law to report and pay tax measured by the amount of federal excise tax paid to the extent the seller has not remitted sales or use tax measured by that amount. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision ~~(i)(h)~~(1) and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

~~(i)(g)~~ ALTERNATE CERTIFICATE FOR EXCLUSION OF FEDERAL EXCISE TAXES FROM MEASURE OF TAX. On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who is qualified under subdivision ~~(i)(g)~~(1) may issue a certificate in substantially the form set forth in subdivision ~~(i)(g)~~(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

(1) A purchaser is qualified and may issue a certificate under subdivision ~~(i)(g)~~ if satisfying all the following requirements:

(A) The purchaser was entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of all the purchaser's purchases of gasoline, diesel, and jet fuel during the prior calendar year on an aggregate basis. A purchaser who was entitled to a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of that purchaser's purchases of one type of fuel, e.g., diesel, but not more than 50 percent of all that purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis is not a qualified purchaser, and may not issue a certificate under this subdivision, for any of that purchaser's purchases of fuel.

(B) The purchaser's business remains substantially the same as during the prior calendar year whereby the purchaser reasonably expects to be entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis.

(C) The purchaser holds a valid California seller's permit.

(2) With respect to any fuel purchased under the certificate which is used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue

Code, the purchaser is liable for use tax on the amount of that federal excise tax. The purchaser must report and pay such use tax with the purchaser's return for the period in which the fuel was used. A certificate may not be issued under this subdivision when the purchaser knows that all of the fuel that would be purchased under the certificate will be used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code.

(3) A certificate issued under this subdivision shall be in substantially the following form:

**Revenue and Taxation Code Section 6245.5 Certificate for the
Exclusion of Sales and Use Tax on Federal Excise Taxes**

This certificate may be issued for purchases of gasoline, diesel, or jet fuel by a purchaser who meets all the required conditions. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on such fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY that I satisfy all of the following conditions:

1. I was entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, and jet fuel on an aggregate basis during the prior calendar year.
2. My business remains substantially the same as during the prior calendar year such that I reasonably expect to be entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, or jet fuel on an aggregate basis.
3. I hold a valid California seller's permit, the number for which is set forth below.

With respect to any fuel that is not used in a manner which entitles me to a direct refund or credit against my income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, or if I do not receive such refund or credit, I will report and pay tax, measured by the amount of the federal excise tax that had been paid in connection with that fuel, with my return for the period in which the fuel is used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Code, the purchaser is liable for use tax on the amount of that federal excise tax. The purchaser must report and pay such use tax with the purchaser's return for the period in which the fuel was used. A certificate may not be issued under this subdivision when the purchaser knows that all of the fuel that would be purchased under the certificate will be used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code.

(3) A certificate issued under this subdivision shall be in substantially the following form:

**Revenue and Taxation Code Section 6245.5 Certificate for the
Exclusion of Sales and Use Tax on Federal Excise Taxes**

This certificate may be issued for purchases of gasoline, diesel, or jet fuel by a purchaser who meets all the required conditions. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on such fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY that I satisfy all of the following conditions:

1. I was entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, and jet fuel on an aggregate basis during the prior calendar year.
2. My business remains substantially the same as during the prior calendar year such that I reasonably expect to be entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, or jet fuel on an aggregate basis.
3. I hold a valid California seller's permit, the number for which is set forth below.

With respect to any fuel that is not used in a manner which entitles me to a direct refund or credit against my income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, or if I do not receive such refund or credit, I will report and pay tax, measured by the amount of the federal excise tax that had been paid in connection with that fuel, with my return for the period in which the fuel is used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Phone Number: _____

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No.: _____

DRAFT
NOT READY FOR PUBLIC RELEASE

2010 MINUTES OF THE STATE BOARD OF EQUALIZATION

Thursday, July 15, 2010

CHIEF COUNSEL MATTERS [J-M]

[J] RULEMAKING

SECTION 100 CHANGES

J1 Proposed Regulation 1598, *Motor Vehicle and Aircraft Fuels (MVF)*

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete Rule 100 changes to incorporate the provisions of Revenue and Taxation Code section 6357.7. The provisions provide a partial exemption from the sales and use of motor vehicle fuel, operative July 1, 2010 (Exhibit 7.X).

Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the section 100 change to Regulation 1598 as recommended by staff.

The Board directed staff to ensure taxpayers are educated on the rate changes since diesel fuel tax rates are also effective July 1, 2010.

ADMINISTRATIVE SESSION

[N] ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of MEMBER, seconded by MEMBER and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

N1 Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 7.X).

Maria (Sandy) A. Dangelo, Tax Technician III, Riverside Office
Larry Hanson, Staff Systems Software Specialist III (Technical), Technology Services Department
Irene Johnson, Senior Programmer Analyst (Specialist), Technology Services Department
John Tyler, Data Processing Manager II, Technology Services Department

N2 Action: Approve the Board Meeting Minutes of May 25-26, 2010.

N3 Action: Adopt Property Tax Forms (Exhibit 7.X).

Note: These minutes are not final until Board approved.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

JULY 15, 2010

ITEM J1

CHIEF COUNSEL MATTERS

RULEMAKING

Reported by: Beverly D. Toms

No. CSR 1662

P R E S E N T

For the Board
of Equalization:

Betty Yee
Chair

Jerome E. Horton
Vice-Chair

Barbara Alby
Acting Member

Michelle Steel
Member

Marcy Jo Mandel
Appearing for John
Chiang, State Controller
(per Government Code
Section 7.9)

Diane Olson
Chief, Board
Proceedings Division

Board of Equalization
Staff:

Bradley Heller
Legal Department

---oOo---

Sacramento, California

July 15, 2010

---oOO---

MS. OLSON: Our next item is J1, Regulation 1598, Motor Vehicle and Aircraft Fuels.

MS. YEE: Okay, Members, we're on item J1. These are the -- excuse me. This is the Section 100 Change. And let me have Mr. Heller introduce the matter.

MR. HELLER: Good morning, Madam Chair. My name is Bradley Heller. I'm an attorney from the Legal Department. And I'm here to request the Board's authorization to complete Rule 100 changes to -- excuse me, Regulation 1598 in order to incorporate a new partial exemption that was added to the Revenue and Tax -- Revenue and Taxation Code as Section 6357.7.

MS. YEE: Okay. Very well. Questions, Members?

MS. STEEL: The diesel, that effective date is next year, right?

MR. HELLER: That's correct.

MS. STEEL: It's not this year. So it's going to go out together?

MR. HELLER: Excuse me?

MS. STEEL: The example goes out together? Or how we going to educate people?

MR. HELLER: The -- in this particular case all the -- all the changes that are illustrated in the

1 attached memo would -- would be done at the same time.

2 But you're correct, that the change to the
3 diesel fuel tax wouldn't be effective until January 1,
4 2011. And essentially this is a Sales and Use Tax
5 regulation and -- and it does note that the rates used
6 in the example are really just for example purposes and
7 that taxpayers need to look up the specific rates
8 applicable to their transactions.

9 And we do intend to educate taxpayers on their
10 diesel fuel tax rates when the rates actually change and
11 at this point there's -- there's no -- I would say that
12 there's -- staff will work with -- with taxpayers to
13 help educate them in general on the diesel fuel tax rate
14 change but there's no additional changes that we're
15 recommending with the -- to this regulation right now.

16 MS. STEEL: So how we educating people?

17 MR. HELLER: Well, my understanding is the
18 diesel fuel tax section is -- or I should say really
19 the -- thank you, Excise Tax Section --

20 MS. YEE: Excise, uh-huh.

21 MR. HELLER -- is -- is working on educating
22 taxpayers and I believe they're really trying to time
23 their education more towards the end of this year so
24 that taxpayers don't change their rates in advance.

25 And so I'm not exactly sure what the timing of
26 those notices are but I know there's information in the
27 work so that --

28 MS. STEEL: Okay. Let's make sure, you know,

1 diesel is from 2011. As is it's tough for these small
2 stores --

3 MS. YEE: Yeah, it's very confusing, yeah.

4 MS. STEEL: Yeah, it's confusing, so --

5 MS. YEE: Yeah.

6 MS. STEEL: -- thank you.

7 MR. HELLER: You're welcome.

8 MS. YEE: Thank you.

9 All right. Other questions, Members, on this
10 change?

11 Hearing none, may I have a motion, please?

12 MR. HORTON: So moved.

13 MS. YEE: Motion by Mr. Horton.

14 Is there a second?

15 MS. MANDEL: Second.

16 MS. YEE: Second by Ms. Mandel.

17 Without objection, the Section 100 change is
18 approved.

19 Thank you.

20 ---oOoo---

1 REPORTER'S CERTIFICATE.
2

3 State of California)
4) ss
5 County of Sacramento)
6

7 I, BEVERLY D. TOMS, Hearing Reporter for the
8 California State Board of Equalization certify that on
9 July 15, 2010 I recorded verbatim, in shorthand, to the
10 best of my ability, the proceedings in the
11 above-entitled hearing; that I transcribed the shorthand
12 writing into typewriting; and that the preceding 5 pages
13 constitute a complete and accurate transcription of the
14 shorthand writing.
15

16 Dated: July 29, 2010.



20 Beverly D Toms

21 BEVERLY D. TOMS

22 Hearing Reporter
23
24
25
26
27
28